

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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JAMES G. LOPEZ,

Plaintiff,

v.

CITY OF PLAINFIELD, PLAINFIELD  
POLICE DEPARTMENT, JOSEPH  
MULLIGAN, KEVIN O'BRIEN, MARTIN  
HELLWIG, JOHN DOE 1-20 (OFFICERS  
OF PLAINFIELD POLICE  
DEPARTMENT) fictitious names  
representing a series of individuals having  
actual identities unknown to Plaintiff at this  
time,

Defendants.

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Civil Action No. 12-cv-4976 (SRC)(CLW)

**ORDER**

**CHESLER, District Judge**

This matter comes before the Court based on Plaintiff James G. Lopez's ("Plaintiff") request for reconsideration of this Court's July 20, 2016 Order [Docket Entry 74], deeming the summary judgment motion filed by Defendants City of Plainfield, Martin R. Hellwig, and Kevin O'Brien (collectively, "Defendants") on June 17, 2016 [Docket Entry 66] to be unopposed. Plaintiff failed to file a timely opposition to this motion, by the due date of July 5, 2016. The Court *sua sponte* extended the time for Plaintiff to submit an opposition one motion cycle, to July 18, 2016 [Docket Entry 70]. Plaintiff also failed to file an opposition by this new opposition deadline.

After this Court filed its Order deeming this motion to be unopposed on July 20, 2016, Plaintiff filed three letters with the Court [Docket Entries 75-76, 79], requesting that the Court

reconsider its decision to treat Defendants' motion as unopposed, and also raising a discovery dispute. In brief, Plaintiff asserts that discovery is not complete, and that the pending motions for summary judgment are therefore not ripe for adjudication [Docket Entry 76]. Defendants filed a responsive letter, indicating that they do not consent to Plaintiff's requested extension [Docket Entry 77]; counsel for Defendant Joseph Mulligan similarly opposes the requested extension [Docket Entry 78].

The proper time to bring issues to the Court's attention related to the scheduling of summary judgment motion briefing is not after an opposition deadline has been missed, nor after the Court has *sua sponte* granted an extension on said deadline, which Plaintiff also missed. Nevertheless, the Third Circuit favors disposition of cases on their merits wherever possible. *See, e.g., Marshall v. Sielaff*, 492 F.2d 917, 918 (3d Cir. 1974). For this reason, the Court will permit Plaintiff to submit an opposition to the summary judgment motion filed by Defendants City of Plainfield, Martin R. Hellwig, and Kevin O'Brien, along with any opposition he wishes to file to the summary judgment motion filed by Defendant Joseph Mulligan, by the deadline currently pending for opposition to Defendant Mulligan's motion: August 1, 2016.

As noted above, Plaintiff also raises a dispute as to the completeness of discovery at this time. Plaintiff's letter to the Court is not the proper procedural mechanism for raising such a dispute. Federal Rule of Civil Procedure 56(d) outlines the proper procedure, including the use of affidavits or certifications, for asserting Plaintiff's objections as to the lack of availability of certain evidence that may support his opposition. Plaintiff may present these issues to the Court in its opposition to Defendants' summary judgment motions, pursuant to the requirements of Rule 56(d). To the extent that Plaintiff believes that discovery should be reopened, that dispute is hereby referred to Magistrate Judge Cathy L. Waldor. Judge Waldor's disposition of this

dispute shall not affect the timing of the summary judgment motion briefing, as described in this Order.

For these reasons,

**IT IS** on this 22nd day of July, 2016,

**ORDERED** that Plaintiff is permitted to submit opposition to the currently pending summary judgment motions filed by Defendants [Docket Entries 66 and 69] by August 1, 2016; and it is further

**ORDERED** that Defendants' replies shall be due by August 8, 2016.

s/ Stanley R. Chesler  
STANLEY R. CHESLER  
United States District Judge